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I and U, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO: 2:18-cv-08469

COMPLAINT FOR:

1. **MONOPOLIZATION-
15 U.S.C. § 2;**
2. **ATTEMPTED
MONOPOLIZATION-
15 U.S.C. § 2**
3. **VIOLATION OF
SHERMAN ACT'S § 1;**
4. **VIOLATION OF
CLAYTON ACT § 3;**
5. **DECLARATORY RELIEF;**
6. **DEFAMATION**
7. **TRADE LIBEL**
8. **FALSE LIGHT**
9. **UNFAIR BUSINESS
PRACTICES (CA B & P
17200)**
10. **UNFAIR TRADE
PRACTICES (CA B & P
17500)**

[JURY TRIAL DEMANDED]

COMPLAINT

Plaintiffs, I and U, Inc., a California corporation and d/b/a Book Cube

1 ("I&U"), Kiuchi Shoten Co. Ltd., and Hideo Kiuchi (collectively hereinafter,
2 "Plaintiffs"), by and through their undersigned counsel, for their Complaint against
3 Defendant Wolters Kluwer Health, Inc. (hereinafter, "Defendant" or "Wolters")
4 states the following.

5 Allegations made on belief are premised on the belief that the same are
6 likely to have evidentiary support after a reasonable opportunity for further
7 investigation and discovery.

8 I.

9 THE PARTIES

10 1. Plaintiff, I and U, Inc., is a corporation, duly organized and existing
11 under the laws of the state of California, located at 879 W. 190th St., Suite 442,
12 Gardena, CA 90248. Plaintiff also does business as and under a fictitious business
13 Book Cube ("Book Cube"). Plaintiff distributes and markets medical and
14 scientific periodicals and has been exporting medical books and journals to Japan
15 since 1996.

16 2. Plaintiff Kiuchi Shoten Co., Ltd, is a Japanese corporation which
17 distributes and markets medical and scientific periodicals in Japan since 1987.

18 3. Plaintiff, Hideo Kiuchi, is a Japanese citizen residing in Japan and is
19 president and CEO of Plaintiff Kiuchi Shoten Co., Ltd.

20 4. Defendant, Wolters Kluwer Health, Inc., is a corporation organized
21 under the laws of the State of Delaware that regularly transacts business in this
22 judicial district. Defendant is the U.S. Medical publishing arm of the European-
23 based Wolters Kluwer information services group.

24 II.

25 JURISDICTION AND VENUE

26 6. This action is brought under the antitrust laws contained in 15 U.S.C.
27

§ § 1, 2, and 14 et. seq. Under 28 U.S.C.A. § 1331, this Court has jurisdiction to adjudicate this dispute.

7. Venue in this jurisdiction is proper under Clayton Act §§ 4 and 12, 15 U.S.C. §§ 15 and 22; and 28 U.S.C. 1391. Wolters Kluwer Health, Inc. regularly transacts business, has offices in, and is subject to personal jurisdiction in this jurisdiction through the marketing, sale and distribution of medical and other scientific periodicals.

8. Intra-district assignment to the Western division is appropriate pursuant to Civil L.R. 3-2(c) as a substantial part of the events that give rise to the claims as alleged herein occurs in the Western division, where Plaintiffs, I and U, Inc., and Bookcube's principal places of business are located.

III

NATURE OF THE CASE

9. This is an antitrust case. Wolters Kluwer Health, Inc. provides information for professionals and students in medicine, nursing, allied health, and pharmacy sectors and publishes professional health information reference and handbooks, textbooks, journals, and newsletters.

11. As a result of its anti-competitive and exclusionary conduct, as discussed throughout this complaint, Defendant currently enjoys a monopoly of distributing various medical publishing content. Defendant's revenues from the sales of this content has increased astronomically and are in part attributable to its three-fold price increases of the publications to its exclusive agents.

12. Defendant claims to identify illegal activity of the Plaintiff's subscriptions.

1 13. Defendant is highly influential in impacting the purchases of these
2 subscriptions.

3 14. Defendants' claims, whether made in their reports or in their marketing
4 collateral, contend that Plaintiffs illegally acquire their subscriptions.

5 15. Plaintiffs are small businesses and business owners selling subscriptions
6 of technical and medical publications to scientists, hospitals, doctors and other
7 related professionals and rely on large publishers to sell them their publications for
8 distribution.

9 16. Wolters has prevented and continues to prevent Plaintiffs from offering on
10 the market an alternative source for medical journals that would have been a less
11 expensive alternative than selling through Wolter's exclusive agents. Wolters has
12 maintained its monopoly over the medical journal market by supplying its
13 customers misinformation about Plaintiff's products and services, and by engaging
14 in a host of other anti-competitive conduct detailed in this complaint.

15 17. In 2017, Wolters manipulated and effectively removed from the market all
16 alternative sources to purchase their medical content, including Plaintiffs. At least
17 as early as mid-2018, Wolters orchestrated a misleading public relations campaign
18 which, ultimately, persuaded customers to further refuse to buy any medical
19 publications from the Plaintiffs.

20 18. Because Wolters succeeded in its misleading and anti-competitive
21 campaign in keeping Plaintiff's distribution off the market, Plaintiff is left with no
22 choice but to apply to each customer for approval to be authorized to sell Wolters
23 publications. Again, in efforts to preclude all competition in the medical
24 publication market, Wolters vehemently opposed Wolter's direct approach to its
25 customers and informed Plaintiff's customers that they were not to purchase any of
26 their publications from Plaintiff.

1 19. Wolters continues to not give up easily its dominant position in the
2 market, and devised a scheme to preclude Plaintiff from reaping the benefits of its
3 enduring and costly efforts to get information to their customers. Since at least as
4 early as May 15, 2018, Wolters has hampered Plaintiff's success in the market
5 through various anti-competitive and exclusionary acts designed to perpetuate its
6 monopoly over the medical publications market, including issuing misleading
7 information about Plaintiffs designed to discourage Plaintiff's long-time customers
8 from purchasing from Plaintiff and using exclusive and "disguised" exclusive
9 contracts with authorized agents, which either preclude or discourage, by means of
10 financial incentives, these entities from placing Plaintiff on their purchase list. The
11 preclusion has resulted in significantly lower than expected sales for Plaintiff.

12 20. Throughout its opposition of competition in the medical publication
13 market and its perpetuation of a monopoly, Wolters has continued to increase the
14 price of its publications and reap the benefits of a monopoly. Wolter's
15 monopolization of the market through anti-competitive and exclusionary conduct
16 has not only proximately caused Plaintiffs hundreds of thousands of dollars in
17 damages, but has also deprived customers of a lower cost alternative to Wolter's
18 publications.

19 21. At the core of this action is not only the anti-competitive behavior of
20 Wolters but also Wolters has consistently provided a misleading impression that
21 Plaintiffs were outrageously engaging in illegal activities soliciting their customers
22 – which in turn has caused additional significant financial harm to Plaintiffs. In
23 doing so, Wolter's conduct has destroyed fair competition – which has resulted in
24 injury to the public interest.

IV

FACTUAL BACKGROUND COMMON TO ALL CLAIMS

22. Since 1978, Wolters has been distributing and marketing scientific and medical journals.

23. Since 1987 Plaintiffs has been distributing and marketing medical and scientific periodicals and has been exporting medical books and journals to Japan.

24. In late 2017 Defendant arranged an exclusive sales arrangement which is simply a concerted scheme to greatly restrict the placement of direct orders, for the primary purpose of raising the prices of medical journals and generating higher royalty revenues.

25. This exclusive sales arrangement is an anticompetitive restraint of trade in violation of section 1 of the Sherman Anti-Trust Act, 15 U.S.C. § 1.

26. Defendant's efforts have imposed market-wide restraints on competition in medical and scientific publishing subscriptions preventing.

27. Defendant currently is acting in concert with customers and sales agents to suppress competition.

28. Some of the strategies advanced by Defendant, such as exclusive sales arrangements, involve restrictive conditions or other restraints on subscriptions designed to raise revenues by reducing or eliminating competition.

29. Defendant's sales representatives are promoting the exclusive arrangements to restrict competition. Under these agreements, each customer agrees to restrict its direct subscriptions, which accounts for a significant portion of the total product category.

30. By severely reducing the number of agents and eliminating competition from the excluded suppliers, the restraint will allow Publishers to garner increased revenues, both through higher rates and through higher prices for the subscriptions,

1 which will rise as competition falls. These increased fees and prices imposed are
2 ultimately borne by the end-user.

3 31. Such scheme could not prevail in the marketplace if it were not agreed to
4 by Defendant's customers. One or a handful of customers, acting independently,
5 would be unlikely to implement such a strategy successfully, because the market
6 would disfavor their publications if it is priced substantially higher than those of
7 non-participating customers. Retailers who offer a broad array of medical journals
8 from many different publishers could effectively refuse to carry the overpriced
9 publications from others that attempt such a strategy on their own, and any such
10 uncoordinated effort to raise prices would likely be quickly defeated or would
11 never get off the ground. For that reason, a scheme that magnifies the collective
12 financial interests of the publishers cannot be effectively achieved through the
13 individual actions of one or two or three publishers. The sales agents themselves
14 have emphasized the "risk" that each individual publisher would face if it were to
15 embark on this strategy as a first mover.

16 32. Each publisher that wishes to participate in this competition-suppressing
17 exclusive sales scheme has a strong incentive, therefore, to see to it that enough
18 other customers agree to go along with the scheme.

19 33. Wolter's, by the coordinated organization of its sales representatives, has
20 made that happen. Wolters are organizing their sales representatives to act in a
21 consciously parallel fashion and in active coordination through the common
22 instrument and agency. As the common sales agents for the publishers, they
23 provide a ready vehicle and enabler for coordination and concerted action.

24 34. These restraints cannot be justified by any pretext of "quality" or any
25 purported need to "rationalize" the market for licensed medical publications. These
26 concerted actions are naked restraints of trade and exclusionary acts designed to
27

1 deny and destroy competition.

2 35. In 2018, Wolters transmitted a letter (attached to this Complaint as
3 **Exhibit A**) informing its readers that Plaintiffs are selling their publications and
4 are doing so “illegally.”

5 36. Although Wolters was notified that this correspondence was clearly
6 erroneous and misleading, Wolters has refused to address any of the specific
7 disputed claims contained in the letter.

8 37. Plaintiff’s prospective customers have consistently and uniformly raised
9 objections to consider doing business with Plaintiffs because of the statements.
10 The power of allegations of illegal behavior from Wolters is immense.

11 38. The statements contained in the letter are false. Plaintiff’s customers
12 have stopped doing business altogether with Plaintiffs after they received a copy of
13 the letter even though they don’t like Defendant’s agents and would rather conduct
14 business directly with Plaintiffs. Such losses demonstrates that, but for the
15 statements made by Wolters, Plaintiffs would have made many more sales than
16 they have.

17 39. The letter alleging Plaintiff’s illegal activity is erroneous, misleading and
18 give a clear message that Plaintiff’s transactions are illegitimate.

19
20 **V.**

21 **CLAIMS FOR RELIEF**

22 **COUNT ONE**

23 **MONOPOLIZATION**

24 40. Plaintiffs reallege paragraphs 1-38. The relevant geographic markets are
25 the United States and Japan. Plaintiff and Wolters compete on both a nationwide
26 and international basis.

1 41. The product market in this case is the sale, subscription and distribution of
2 scientific and medical journals and publications.

3 42. Wolters has monopoly power in the alleged markets and even if there
4 were realistic alternatives to Wolters scientific and medical publications, Wolter's
5 dominance and control over the market is formidable. Overall, Wolters has
6 significant market power in the territories.

7 43. By engaging in the unlawful anti-competitive and exclusionary conduct,
8 in violation of the antitrust laws contained in 15 U.S.C. § 2, set forth herein,
9 Wolters has willfully maintained monopoly power. Wolters is a monopolist
10 because, as evidenced by the above-described conduct, it has effectively excluded
11 competition from the relevant market, thereby maintaining its dominant market
12 share in the relevant market, and has profited by its anti-competitive conduct by
13 raising their publication prices and reaping the benefits of its illegal monopoly. The
14 barriers to entry in the relevant market have also prevented competition.

15 44. Wolter's conduct has proximately caused damages to Plaintiffs in an
16 amount to be proved at trial.

17 **COUNT TWO**

18 **ATTEMPTED MONOPOLIZATION**

19 44. Plaintiffs reallege paragraphs 1-43. As herein-above alleged, Wolters
20 has engaged in anti-competitive and exclusionary conduct with a specific intent to
21 monopolize the relevant market (as defined above), and has created a dangerous
22 probability of achieving a monopoly, in violation of the antitrust laws contained in
23 15 U.S.C. § 2.

24 45. Wolter's conduct has proximately caused Plaintiff's damages in an
25 amount to be proved at trial.

COUNT THREE

VIOLATION OF SHERMAN ACT'S § 1

46. Plaintiffs reallege paragraphs 1-43. As herein-above alleged, Wolters has entered into exclusive and "disguised" exclusive contracts with agents that have resulted in unreasonable restraints of trade and competition in interstate commerce in violation of the antitrust laws contained in 15 U.S.C. § 1.

47. Wolter's conduct has proximately caused damage to Plaintiff in an amount to be proved at trial.

COUNT FOUR

CLAYTON ACT § 3

48. Plaintiffs reallege paragraphs 1-43. As herein-above alleged, Wolters has made exclusionary contracts for the sale of its medical journals and publications and has established prices, discounts, rebates, and fees on the condition that their agents not use, deal with, or purchase from Plaintiff. The effect of such conduct has been to lessen competition substantially and to tend to create a monopoly in the relevant markets alleged above, in violation of Clayton Act § 3, contained in 15 U.S.C. § 14.

49. Wolter's conduct has proximately caused damage to Plaintiff in an amount to be proved at trial.

COUNT FIVE

DECLARATORY RELIEF (28 U.S.C. § 2201)

48. Plaintiffs repeat and re-allege the foregoing paragraphs 1 through 47 above as though fully set forth herein.

49. An actual controversy exists between Plaintiffs and Defendant regarding

1 their respective rights and duties in connection with, and the enforceability of
2 Wolter's sales restrictions. Wolters contends that the Plaintiffs sales are unlawful;
3 Plaintiffs oppose these contentions.

4 49. A judicial determination is necessary and proper at this time under the
5 circumstances so that Plaintiffs may ascertain their rights and duties in connection
6 with Wolter's sales restrictions. In the absence of a judicial declaration, Plaintiffs
7 may have no choice but to comply with an unlawful, unreasonable and
8 unenforceable restraint.

9
10 **COUNT SIX**
11 **DEFAMATION**

12 50.Plaintiffs repeat and re-allege the foregoing paragraphs 1 through 43
13 above as though fully set forth herein.

14 51.The Defamatory Statements disparaged Plaintiff's business reputation
15 because they expressly characterized Plaintiffs as engaging in illegal acts.

16 52.These statements were published to Plaintiff's customers, who upon
17 receiving the reports were afraid to do business with Plaintiffs.

18 53.The Defamatory Statements were false because, among other things,
19 Plaintiff's actions were not improper or illegal.

20 54.Because Defendant could not explain or otherwise support the
21 Defamatory Statements, Defendants knew, or were reckless as to the fact that, the
22 Defamatory Statements were false.

23 55.Defendant's publications are ongoing, and their letters continue to be
24 published. Money damages will not make Plaintiffs whole for the injury
25 occasioned by these statements. Unless enjoined by this Court, these false and
26 damaging statements will continue.

1 56.As a direct and proximate result of Defendant's Defamatory Statements,
2 Wolter's conduct has proximately caused damage to Plaintiffs in an amount to be
3 proved at trial.

4
5 **COUNT SEVEN**

6 **TRADE LIBEL**

7 57. Plaintiffs repeat and re-allege the foregoing paragraphs 1 through 43
8 above as though fully set forth herein.

9 58. The Defamatory Statements disparaged the integrity of Plaintiff's
10 business, services and products. These statements were made, not only to
11 Plaintiff's customers, but to countless other prospective purchasers of the
12 Plaintiff's subscriptions. These customers and purchasers understood that the
13 Defamatory Statements related very negatively on the integrity of the Plaintiffs.

14 59. As a direct and proximate result of Defendant's Defamatory Statements,
15 Wolter's conduct has proximately caused damage to Plaintiffs in an amount to be
16 proved at trial.

17 60. In addition to damages for lost sales, Plaintiff is entitled to punitive
18 damages under California Civil Code section 3294 in that Defendant acted with
19 malice, and such damages should be awarded at the discretion of the court or jury.

20 61. An actual controversy exists between Plaintiff and Defendant in that
21 Defendant has asserted and may continue to assert disparaging and untrue
22 characterizations about Plaintiff.

23 62. Unless this Court issues declaratory relief, these false and damaging
24 statements will continue.

COUNT EIGHT

FALSE LIGHT

63. Plaintiff Hideo Kiuchi repeats and re-alleges the foregoing paragraphs 1 through 62 above as though fully set forth herein..

64. Before publication of the Wolters Letter, attached hereto as Exhibit A, Plaintiff, Mr. Hideo Kiuchi was a respected member of the Japanese publishing community in various capacities. He was well respected and held a position in the publishing community without any notice of complaints or significant criticism.

65. However, Defendant engaged in a campaign to damage Mr. Kiuchi's reputation and interfere with his ability to utilize his skills in the publication arena.

66. Defendant Wolters shared false stories with other members of the publishing community with the intent of portraying Mr. Kiuchi as a fraud and involved in illegal dealings in the publishing community.

67. This campaign involved publishing false statements of fact in the letters sent to customers and potential customers with whom Mr. Kiuchi worked with.

68. One of the more egregious false statements of fact are that were published were that Mr. Kiuchi engaged in illegal business dealings.

69. Defendant knew or had reason to know that all of these representations are false and published them with the intent to destroying Mr. Kiuchi's reputation in the Japanese Publishing Community.

70. All of those accusations would be highly offensive to any self-respecting individual in the Japanese publishing community, if not a reasonable person in Mr. Kiuchi's position.

71. No one, especially an individual running a scientific and medical publishing office, would want to be known as someone who commits a crime in order to gain business.

1 72. With this in mind, Defendant published unfounded allegations to publicly
2 humiliate Mr. Kiuchi and ruin his reputation.

3 73. As a result of Defendants' publication Plaintiff, Mr. Hideo Kiuchi was
4 not able to secure contracts and his reputation was adversely affected to the point
5 that he lost clients and revenue in an amount to be proved at trial.

6 **COUNT NINE**

7 **UNFAIR COMPETITION UNDER**

8 **CALIFORNIA BUSINESS & PROFESSIONS CODE §17200**

9 74. Plaintiffs reallege and incorporates by reference the allegations of
10 paragraphs 1 through 62 of this Complaint as if fully set forth herein.

11 75. Defendant's activities as stated herein constitute unfair competition
12 within the State of California and in violation of California law as set forth under
13 Business and Professions Code §17200.

14 76. Defendant's wrongful activities have caused, and unless enjoined by this
15 Court will continue to cause, irreparable injury and other damage to Plaintiff's
16 business, reputation and good will. Plaintiffs have no adequate remedy at law.

17
18 **COUNT TEN**

19 **UNFAIR TRADE PRACTICES UNDER**

20 **CALIFORNIA BUSINESS & PROFESSIONS CODE §17500**

21 77. Plaintiffs reallege and incorporate by reference the allegations of
22 paragraphs 1 through 62 of this Complaint as if fully set forth herein.

23 78. Defendant's activities alleged herein constitute unfair and deceptive acts
24 and practices in the conduct of its trade and business in violation of California
25 Business and Professions §17500.

26 79. Upon information and belief, Defendant's wrongful and deceptive
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activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and good will. Plaintiffs have no adequate remedy at law.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That this Court find that Wolters conduct is in violation of the antitrust laws alleged in this complaint;
2. Award Plaintiffs actual and treble damages proximately caused by Wolter's conduct that is violative of the antitrust laws;
3. Permanently enjoin and restrain Wolters, and those acting in concert with them or at their direction from imposing or enforcing any policy that condition the sales of Wolter's publications on any distributor, sales representative, importer or exporter directly or indirectly;
4. For a judicial determination by this Court that the restrictions and exclusions set forth in Wolters' letter, attached hereto as Exhibit A is contrary to the antitrust laws of the United States and that the portions of the letter between Wolters that conditions and restricts the sales of its publications is, accordingly, unenforceable;
5. That Wolter's publically retract its misleading statements that Plaintiffs are engaging in unlawful conduct, as set forth in their letter, attached hereto as Exhibit A to all of its customers;
6. Award Plaintiffs costs of the suit, simple interest on actual damages, and reasonable attorneys' fees as provided for in 15 U.S. C. § 15(a); and

1 7. For such other and further relief as may be just and equitable.

2
3 Respectfully Submitted,

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6 THE LAW OFFICES OF JOSEPH R. CRUSE, JR.

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8
9
10 Dated: September 27, 2018

By: /s/ Joseph R. Cruse, Jr.

Joseph R. Cruse, Jr.

Attorneys for Plaintiffs

11 I AND U, INC., BOOK CUBE, KIUCHI

12 SHOTEN and HIDEO KIUCHI

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all issues that may be tried by jury.

Respectfully Submitted,

LAW OFFICES OF JOSEPH R. CRUSE, JR.

Dated: September 27, 2018

/s/ Joseph R. Cruse, Jr.

Joseph R. Cruse, Jr.

Attorneys for Plaintiffs

I AND U, INC., BOOK CUBE, KIUCHI
SHOTEN and HIDEO KIUCHI